From: Curtis Rey
To: Microsoft ATR
Date: 1/5/02 2:16pm
Subject: Competitive Impact Statement

I am writing to your team to voice some concerns I have about the proposed settlement in the Microsoft v D.O.J. case. I understand that you have, more than likely, recieved countless communiques regarding this issue. However, I feel compelled to write to you in regards to possible, if not probable, negative outcomes of the present state of the proposed settlement.

Mr. Cringley did an interesting analysis of the MS Settlement that I thought of particular interest to the Open Source community, and to the Department of Justice' team. But his opinions are not pertainant to just the Open Source community, but also relate to commercial and public interest regarding the competitive business and market arena.

"The remedies in the Proposed Final Judgement specifically protect companies in commerce -- organizations in business for profit. On the surface, that makes sense because Microsoft was found guilty of monopolistic activities against "competing" commercial software vendors like Netscape, and other commercial vendors -- computer vendors like Compaq, for example . . .But Microsoft's greatest single threat on the operating system front comes from Linux -- a non-commercial product -- and it faces a growing threat on the applications front from Open Source and freeware applications. . . .Section III(J)(2) contains some very strong language against not-for-profits. Specifically, the language says that it need not describe nor license API, Documentation, or Communications Protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business: "...(c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..." So much for SAMBA and other Open Source projects that use Microsoft calls" (as in protocal and API calls). "The settlement gives Microsoft the right to effectively kill these products. Section III(D) takes this disturbing trend even further. It deals with disclosure of information regarding the APIs for incorporating non-Microsoft "middleware." . . .. Yet, when we look in the footnotes at the legal definitions for these outfits, we find the definitions specify commercial concerns only. "

"The biggest competitor to Microsoft Internet Information Server is Apache, which comes from the Apache Foundation, a not-for-profit. Apache practically rules the Net, along with Sendmail, and Perl, both of which also come from non-profits. Yet not-for-profit organizations have no rights at all under the proposed settlement. It is as though they don't even exist."

My concerns, and the conerns of many others are that "..the government is shut out, too. NASA, the national laboratories, the military, the National Institute of Standards and Technology -- even the Department of Justice itself -- have no rights."

To be specific. Such companies as Sun, Oracle, not to mention IBM stand to loss greetly. I would like to remind the ATR-team that IBM alone has invested over $1 billion in open source developments and products. Granted it is not the function of the D.O.J. to secure the profitability of private industry. However, correct me please if I am mistaken, but the purpose of the case was to curtail the illegitimate business practices of Microsoft and to afford a more level and competitive environment for private industry and business. Also, the cases underlaying function was to further provide an equitable market place for the comsumer.

I fail to see how it is expected that Microsoft will "meet reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..." I believe a independent standard should be the criteria under which Microsoft may "certifying the authenticity and viability of its business [products and services]." This is because, having been found unanimously guilty of being a monopoly and all the aspects of the aformentioned, it is incumbant upon Microsoft to continue, in part or in whole, to conduct its' business as it did prior to any ajudication of guilt, penality, or constraints.

Micosoft products, such as "Office", have become a quasi-standard simply by its' ubiquity in the market place. And furthermore, Microsofts ubiquity in the market place has been deemed to have been established by leveraging its' monopoly position in combination with unfair, and now deemed by "fact of law", illegal business practices. Hence, if such products and their underlaying technology (in the form of source code, API's, protocols, etc..) has become the aformentioned "quasi-standard" does it not seem reasonable and prudent to formalize said standard and allow governance of this standard to be done by a consortium of independant agencies. And that the underlaying technology involved in this standard be made open, insofar as to afford competing business and developers (comercial or research based) the opportunities to provide the consumers and businesses relying on these product with greater choice, stablility, "security" and flexiblity of products to choose from and impliment.

I strongly urge the ATR-team handling the Microsoft case and settlement to redirect their efforts in refining the conditions, stipulations, and mandates of the aggrement in order to provide a more suitable framework for the use and development of informantion technology and computing products and markets. I fear that in its' present form the proposed settlement will only further entrench Microsofts position in the market place. And it will lead to further and costly litigation in the future.

Thank You. Respectfully, Curtis Rey R.N. B.S.N.